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7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF WASHINGTON

9 In Re:

Case No. 17-02025-FPC9

10 KENNEWICK PUBLIC HOSPITAL
11 DISTRICT,

12 Debtor.

13 KENNEWICK LIQUIDATION TRUST,

Adv. Proc. No. 17-80042-FPC9

14 Plaintiff,

**STIPULATION DISMISSING
CERTAIN CLAIMS**

15 v.

16 THE UNIVERSITY OF PUGET
17 SOUND, a Washington nonprofit
corporation,

18 Defendant,
19
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STIPULATION DISMISSING CERTAIN
CLAIMS

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1 Pursuant to Federal Rule of Bankruptcy Procedure 7041 and Federal Rule
2 of Civil Procedure 41(a)(1)(A)(ii), Plaintiff Kennewick Liquidation Trust (the
3 “Liquidation Trust”) and Defendant the University of Puget Sound (the
4 “University”) hereby stipulate and agree as follows:

5 1. The Escrow Transaction, as defined and set forth in paragraph 7.2 of
6 the Plaintiff’s Amended Complaint (ECF No. 56), has not closed, and the
7 transfers contemplated by the documents deposited into escrow have not
8 occurred. Any further transfer or sale of the remaining Ayers Property shall be as
9 directed by the Court in accordance with the resolution of the pending claims and
10 defenses. Therefore, the parties agree that:

- 11 a. the claim for relief set forth in ¶ 19.4 of The University of Puget
12 Sound’s Answer to Amended Complaint, Defenses and
13 Counterclaims (Doc 80) shall be dismissed with prejudice; and
14 b. the Liquidation Trust is entitled to a declaratory judgment on its
15 fourth, sixth, eighth, tenth and eleventh claims for relief set forth in
16 the Amended Complaint for Declaratory Judgment, Quiet Title,
17 Avoidance of Transfers, Recovery of Avoided Transfers, and
18 Avoidance of Judgment (Doc 56) (the “Amended Complaint”).

19 2. The parties also agree that the fifth, seventh and ninth claims for
20 relief under the Amended Complaint shall be dismissed with prejudice and that

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1 the University shall be entitled to a declaratory judgment that the payments
2 identified in those claims are not avoided.

3 3. The judgments referenced in paragraphs 1 and 2 above shall not be
4 entered as partial final judgments under Fed. R. Civ. P. 54(b) but rather shall be
5 incorporated into the final judgment in this adversary proceeding.

6 4. Aside from the declaratory relief set forth in paragraphs 1 and 2
7 above, the parties shall not seek and are not entitled to any further relief in
8 connection with the claims addressed in those paragraphs. For the avoidance of
9 doubt, this stipulation is without prejudice to any argument regarding the
10 applicability of the Settlement Agreement and/or the Amendment to define the
11 parties' rights in the Ayers Property, if any.

12 5. The parties agree to the dismissals and judgments herein as a
13 compromise, to avoid to costs and risks of litigation. In addition, the University's
14 position is that the Escrow Transaction is moot in any event. Accordingly,
15 nothing in this stipulation is or should be deemed to be an admission as to the
16 merits of the claims settled herein or any related defenses, and neither party shall
17 be deemed the prevailing party with regard to any such claims.

18 6. The parties further agree that each side shall bear its own costs and
19 expenses incurred herein, and shall not seek to recover any such costs and
20 expenses from the other.

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1 7. Nothing in this stipulation is intended to have any impact or effect
2 upon any claim, defense, remedy, or argument not explicitly addressed by this
3 stipulation. Without limitation, this stipulation is without prejudice to any
4 argument or counter argument either party may make that (a) the disposition of
5 the Ayers Property should be determined by, and in accordance with the
6 provisions of, the Settlement Agreement and/or the Amendment, or (b) the
7 Settlement Agreement and/or the Amendment eliminated any equitable interest
8 the University may have held in the Ayers Property. Nothing in this stipulation
9 shall have any impact or effect on the Court's Order Re Summary Judgment
10 Motions (Doc 126) or any argument the Liquidation Trust or the University may
11 make before this Court or in connection with any appeal with regard to such
12 order.

13 8. The parties agree that an order approving this stipulation may be
14 entered forthwith.

15 SO STIPULATED AND AGREED THIS 26th DAY OF APRIL, 2019:

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